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8 **UNITED STATES BANKRUPTCY COURT**

9 **DISTRICT OF NEVADA**

10 In re:
11 DESERT OASIS APARTMENTS, LLC,
12 Debtor.

Case No. BK-S-11-17208-BAM
Chapter 11

**REPLY BRIEF IN SUPPORT OF
EMERGENCY MOTION FOR AN
ORDER AUTHORIZING THE USE OF
CASH COLLATERAL ON AN INTERIM
AND CONTINUING BASIS**

Date: May 25, 2011
Time: 9:30 a.m.

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18 DESERT OASIS APARTMENTS, LLC, the debtor and debtor-in-possession ("Debtor") in
19 the above-captioned chapter 11 case, by and through undersigned proposed counsel and pursuant
20 to 11 U.S.C. § 363, hereby files this Reply Brief In Support of Emergency Motion For An Order
21 Authorizing The Use Of Cash Collateral On An Interim And Continuing Basis ("Motion").

22 As set forth in the Motion, the Debtor respectfully requests that this Court enter an order
23 authorizing the use of cash collateral on an interim and continuing basis. **The Debtor seeks leave**
24 **to utilize the revenue generated by its apartment complex (the "Revenue") to maintain the**
25 **apartment complex, to pay the secured lender interest at the non-default interest rate and**
26 **the balance of the Revenue collected will be held by the Debtor and not used for other**
27 **purposes.**

28 1. As stated in the Declaration of Thomas C. Ruffing, over the past 7+ years, the
original principal balance on the loan secured by the Property has been reduced from \$5,200,000

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1 so that the balance of principal, interest, late charges and default interest is now less than
2 \$3,100,000.

3 2. While Wells Fargo Bank questions the \$6,500,000 value of the Property given by
4 David Gaffin in his Declaration (and admits that his opinion is admissible), it has provided no
5 contrary opinion of value. The value given by Mr. Gaffin is only \$50,000 per apartment unit.
6 There is no evidence that the Property is depreciating in value or will depreciate in value in the
7 next 6 months.

8 3. Wells Fargo Bank does not dispute the items in the proposed budget are reasonable
9 and necessary expenses for the maintenance of the Property. The Bank is very familiar with the
10 expenses of operations as it, for a time, had to approve all expenses when the rental income had
11 been deposited in a lock-box under the Bank's control.

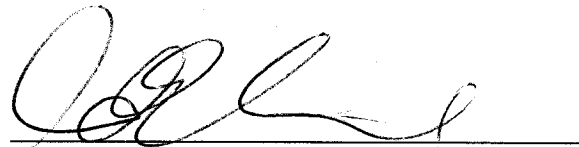
12 4. The Debtor's proposal for use of cash collateral provides for payment of current
13 interest to Wells Fargo Bank at the non-default interest rate.

14 5. The Debtor's proposal for use of cash collateral provides that the final order be
15 effective for 6 months, not forever.

16 6. The Debtor has not disputed the Bank's lien on post-petition rent and, except for
17 the payment of budgeted expense items and post-petition interest, has proposed that the balance be
18 retained by the Debtor and not used for other purposes.

19 Pursuant to LR 9021, a revised proposed form of order is attached as **Exhibit "3."**

20
21 Dated this 24th day of May, 2011.



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EXHIBIT “3”

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

DESERT OASIS APARTMENTS, LLC,

Debtor.

Case No. BK-S-11-17208-BAM
Chapter 11

**INTERIM ORDER AUTHORIZING THE
USE OF CASH COLLATERAL**

Date: May 25, 2011
Time: 9:30 a.m.

Final Hearing Date:
Final Hearing Time:

The Debtor's Emergency Motion for an Order Authorizing the Use of Cash Collateral on an Interim and Continuing Basis [Docket #12] (the "Motion") having come before this Court pursuant to an Order Shortening Time [Docket #20], the Stipulated Order Continuing Hearing [Docket #27], an Opposition [Docket #29] having been filed on behalf of Wells Fargo Bank, N.A. as trustee for J.P. Morgan Chase Commercial Mortgage Securities Corp. (the "Bank"), and a Reply having been filed on behalf of the Debtor, the Court having reviewed the pleadings, hearing the arguments and representations of counsel, and finding good cause, it is

1 **ORDERED** that the Debtor is authorized to use the revenue generated by its apartment
2 Complex (the "Apartment Complex") to maintain the Apartment Complex, to pay management
3 fees, payroll and benefits for employees, provide services to the tenants, for payment of
4 maintenance expenses, real estate taxes, insurance premiums, utilities incurred by the apartment
5 complex, and for no other purposes, as stated in the budget provided to the Court, a copy of which
6 is attached hereto as Exhibit "1;"

7 **ORDERED** that any material changes (changes in excess of 15%) in the Debtor's budget
8 must be either approved by the Bank or by this Court;

9 **ORDERED** that the Bank has a replacement lien in cash collateral consisting of post-
10 petition rental income to the same extent, validity and priority as its pre-petition liens;

11 **ORDERED** that the Debtor must file its monthly operating reports each month by the 20th
12 day of the following month;

13 **ORDERED** that the Debtor shall pay the Bank monthly interest payments at the non-
14 default interest rate each month beginning June, 2011;

15 **ORDERED** that the balance of funds shall be held by the Debtor and not used for any
16 other purpose unless approved by the Bank or this Court; and it is further

17 **ORDERED** that a final hearing on the Motion will be held on _____ at
18 _____.

19 **IT IS SO ORDERED.**

20 Submitted by:

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1 In accordance with LR 9021, counsel submitting this document certifies that the order accurately
2 reflects the court's ruling and that:

3 _____ The court has waived the requirement set forth in LR 9021 (b)(1).

4 _____ No party appeared at the hearing or filed an objection to the motion.

5 X I have delivered a copy of this proposed order to all counsel who appeared at the hearing,
6 and any unrepresented parties who appeared at the hearing, and each has approved or
7 disapproved the order, or failed to respond, as indicated above.

8 _____ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order
9 with the motion pursuant to LR 9014(g), and that no party has objected to the form or
10 content of the order.

11 _____
12 Lenard E. Schwartzer, Esq.
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